IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 33

UNITED MINE WORKERS OF AMERICA, DISTRICT 12,
Petitioners,

v.

ILLINOIS STATE BAR ASSOCIATION, AN ILLINOIS NOT FOR PROFIT CORPORATION, *et als.*,
Respondents.

On Writ of Certiorari to the
Supreme Court of the State of Illinois

PETITIONERS' REPLY BRIEF

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Questions Presented

In the main, answers to Respondents' arguments are found in Petitioners' main brief. Inaccuracies therein prompt this Reply, wherein Petitioners will follow the sequence in Respondents' brief.

Foreword

Respondents object (Br. 2) to Petitioners' statement of Question 1 insofar as it asserts the attorney's salary is paid from membership dues. Petitioners' recital in

Answers to Interrogatories (R. 15) that "No portion of dues is allocated to pay attorney's salary" follows Petitioners' statement that "Dues of each member have been $5.25 per month since November 1st, 1964" (R. 15). Read conjointly, the meaning is clear and positive. Reasonably interpreted it means, and could mean, only that of the dues paid by Petitioners, no amount thereof is allocated to pay the attorney's salary. But it does not mean, nor could it mean, that the attorney's salary is paid from some source other than membership dues. The fact that Respondents do not suggest the record shows any source other than membership dues emphasizes the total lack of validity to their objection, as well as their charge (Br. 2) that the "record refutes" Petitioners' statement of Question 1.

Statement of the Case

Respondents' statement of the case omits numerous facts appearing in Petitioners' statement (Br. 5-9). Some of the omissions are that the attorney's employment letter advised him he would represent an injured member "if he desires your services" but "If he is represented by other counsel you will immediately turn over his file to such counsel"; the attorney would "receive no further instructions or directions and have no interference from the District, nor from any officer, and your obligations and relations will be to and with only the several persons you represent" (R. 19-20). Also omitted are undisputed facts that final determinations concerning settlements are made by claimants (R. 45); the full amount of settlements or awards is paid directly to the injured member; no deductions are taken therefrom; and neither the attorney, the district nor any officer receives any portion thereof (R. 16, 46, 62). Undisputed too is the

attorney's statement that he frequently suggested to injured members "they could employ other counsel if they wished" (R. 20, 51, 52).

Respondents' Statement of the Case points to a form of "Report to Attorney on Accident" which appears in the Appendix to their brief (pp. 42-44). This report, prepared by the injured person or someone under his direction (R. 58) after a reasonable time has elapsed when compensation is due and demand on the company has been made, is to bring to the attorney's attention cases where compensation is not paid when due, or is inadequate, or where payments are discontinued before it is proper so to do (see Respondents' Brief, p. 42). Another form referred to in the record and in Respondents' statement (Br. 8) is the *application for adjustment of claims* (R. 18), which is the form forwarded to the Industrial Commission. While Petitioners' attorney authorized his name to be signed to the applications for adjustment of claims by secretaries in the union offices, his deposition discloses that when asked "whether you might dictate it to" employees in the office of, and paid by, District 12, the attorney replied, "That is the only way it is done generally speaking is that *they are dictated by me to the secretary*" (R. 36, 18).

ARGUMENT

I.

I., A. and B.

Citations of state authorities in Respondents' brief (pp. 14-15) are cases which are unrelated to labor unions and which did not discuss constitutional rights posed by this Court's *NAACP* v. *Button*, 371 U.S. 415 and *BRT* v. *Virginia State Bar*, 377 U.S. 1; and such cases all antedated *Button* and *Trainmen*.

Respondents stress that Illinois has many competent and successful practitioners before Illinois' Industrial Commission (Br. 19-20), but this was not a projected issue before the Illinois Supreme Court. That Court did not base its opinion on such an argument nor, as Respondents stress (Br. 17-19), upon whether an analysis of workmen's compensation cases before that Court reflected competency or incompetency on the part of Petitioners' attorney, or upon whether the arrangement fully advanced legitimate legal claims of coal miners.

Whether the volume of claims handled by one attorney, or the fact that Petitioners' attorney as an Illinois state senator spends a certain portion of his time in a legislative session or that he earns a salary from the State of Illinois as a senator are matters outside the complaint's allegations, as well as the proof in the trial court; they were not presented to the Illinois Supreme Court, as the record herein shows; and the Illinois Supreme Court's opinion, of which Petitioners complain to this Court, made no mention of them. They are totally *dehors* the record.

These irrelevancies are best manifested in the fact that the instant case was not instituted to mirror dissatisfaction of injured coal miners represented by the attorney selected to represent Petitioners, but it was initiated by a group of attorneys whose complaint does not even suggest that it has the imprimatur of a majority of the members of the State Bar Association.

What is pertinent, and this Respondents ignore, is that uncontradicted evidence establishes that injured coal miner members are not bound to use the attorney so selected by Petitioners. Petitioners' main brief (p. 32) asserts that the attorney's employment letter merely

makes the attorney available *if an injured employee "desires your services"*, but "If he is represented by other counsel you will immediately turn over his file to such counsel" (R. 19-20).

The invalidity of Respondents' challenge (Br. 27) of Petitioners' assertion that union members have free choice of an attorney by referring to the Elery D. Morse incident becomes unequivocal when tested by the record's showing: Initially Respondents' complaint charged that though Morse retained the services of attorneys to file his application for adjustment of his claim with the Industrial Commission, the District 12 attorney also filed a claim for Morse without his consent, approval, authorization or knowledge (R. 6); though Petitioners denied these allegations (R. 7-8) and their motion to strike them was denied (R. 8-10), the record does not disclose any attempt by Respondents to prove the allegations. Instead, the record discloses Respondents' motion to delete the Morse allegations. Petitioners objected thereto, asserting *inter alia* (R. 21) that Morse, an elderly man, "acting upon bad advice", *retained counsel who*, "well knowing that he had and was entitled to the free services of counsel provided by himself and his fellow employees, *took, for themselves out of his award the sum of ($1,795.00) One Thousand Seven Hundred Ninety-Five Dollars*" and that the *Morse averments "should remain in the Complaint and the facts should be disclosed for the record as an apt illustration of the commercialism, and its attendant evils, the Plaintiffs are seeking to restore to the industrial accident field in the* State of Illinois" (R. 21). The trial court overruled Petitioners' objections and permitted the complaint to be amended by deleting the Morse allegations (R. 21).

Petitioners do not contend that injured workmen may not pay an attorney a fee for services rendered in a workmen's compensation case. They do contend that by statute the Illinois Legislature deemed it essential to be protective of compensation awards. Statutes cited by Respondents (Br. 21-22) demonstrate clearly the legislative intent that attorneys' fees should be carefully scrutinized by the Industrial Commission and held at a minimum to the end that as much of the award as possible should find its way to the claimant or his beneficiaries. Clearly, the protection of coal miners' legal rights at a minimum cost is consonant with the philosophy of Illinois' workmen's compensation statute. Nothing therein is suggested by Respondents as reflecting legislative will or intent that Petitioners' legal aid plan violated its expressed protective policy. To the contrary, it must be presumed, in view of the plan's long existence, that the Illinois legislature knew of and sanctioned the plan by which laborers were able to procure awards at a minimum cost, rather than to pay 10 to 20 percent thereof which Respondents admit (Br. 21-22) the Industrial Commission has allowed.

It is pertinent that Section 19(c) of the Act, cited by Respondents (Br. 22), authorizes the payment of attorneys' fees "for services *authorized by the Commission* under this Act".

Respondents' argument (Br. 22-25) that the Labor Management Relations Act (29 USCA 141, *et seq.*) does not have within its purview the salaried lawyer arrangement considered by the Illinois Supreme Court overlooks the fact that the right of collective bargaining includes, as one of the conditions of employment, a labor union's right to demand workmen's compensation coverage in

relation to their employment. Certainly this right includes not only the right of employees "to consult with each other in a fraternal organization" and to "talk together freely as to the best course to follow" as this Court enunciated in *Trainmen*, 377 U.S. 1, 5-6, but also the right of a group of union members to assist each other in assuring legal assistance in the prosecution of a claim related to their employment.

I., C.

To argue, as Respondents' do (Br. 27-28), that it is appropriate for an insurer to provide and pay *an insurer-selected attorney* to represent an insured on the basis that "it is the insurance company's money", and yet press upon this Court that coal miners may not do so when their rights to consult with each other and select a spokesman from their number "who could be expected to give the wisest counsel" (377 U.S. 6) in carrying out a legal aid program are constitutionally and statutorily recognized under national labor policy, is indeed an incongruity. If freedom of choice in selecting an attorney is the guiding factor, as Respondents argue, it is indeed brash for Respondents to contend that coal miners in voluntary associations as a labor union may not choose an attorney to represent those of them in prosecuting their claims arising in their unfortunate periods of injury or resulting in death from employment, and yet, in contrast, assert that it is appropriate this alleged condemnation does not exist where an insurer selects and pays for counsel services rendered an insured because "it is the insurance company's money".

Most telling of the fallacy and abortiveness of Respondents' argument appears in their assertion that in the insurer-insured legal aid arrangement there is "a

community of interest growing out of the contract of insurance with respect to an action brought by a third party against the insured" (Br. 27); yet, as shown in Petitioners' brief (p. 33), that "community of interest" dissipates, as the American Bar Association's Committee on Professional Ethics and Grievance's Opinion 282 recites, "If the insured does not desire to avail himself of the company's obligation to defend the suit including counsel, . . . he is at complete liberty *to renounce his rights under the insurance contract* and employ independent counsel at his own expense". Yet, an injured coal miner, free to select and pay another attorney, is not required to give up any right he possesses.

Respondents' good faith is clouded when, in charging "that the individual miner is exploited to benefit the union" (Br. 28), they assiduously withhold from the Court and ignore the uncontradicted evidence that the full settlement or award is paid directly to the injured member; no deductions are taken therefrom; the attorney receives no part thereof; and neither the District nor any officer receives any portion of the award (R. 16, 46, 62; Pet. Br. 9). On the other hand, even Respondents admit (Br. 21-22) that, where fees are fixed by the Industrial Commission, from 10 to 20 percent of awards, are allowed. To this degree of course the awards are dissipated. Respondents' efforts herein, implemented by the Illinois Supreme Court's opinion and judgment herein, to impose upon a laboring man, at a time when he is suffering physical handicap as well as inability to earn a livelihood, the requirement of sharing with a lawyer whatever inadequate compensation he may receive, poses the quaere whether the instant litigation is an attempt to serve the selfish interests of members of the legal profession at the expense of injured workmen.

Respondents' thesis that exploitation of the coal miner would not exist if he is represented by an attorney other than Petitioners' choice finds full challenge in their citation (Br. 21, fn. 4) of *People ex rel. Chicago Bar Assn.* v. *Lally,* 313 Ill. 21, 144 N.E. 329 (1924) which gives in detail the charges of fraud by an attorney upon a compensation claimant in connection with an attorney's fee fixed by the Industrial Commission.

I., D.

Answers to Respondents' response to Petitioners' complaint that the injunctive decree lacks factual support are found in Petitioners' main brief (pp. 37-38).

Though Respondents challenge (Br. 29) Petitioners' citation of *State of Wyoming* v. *State of Colorado,* 286 U.S. 494, as authority that an injunctive decree should not be broader than the case warrants, it is noted that the opinion (p. 508) reads that "No showing appears to have been made indicative of any occasion at that time for a broader injunction. Of course, in the absence of such showing, a broader injunction was not justified".

Nor are Respondents' suggested limitations (Br. 30) free of Petitioners' objections set forth in their main brief. Even if the Court rejects Petitioners' contentions that employment of an attorney on a salary basis to represent injured workmen in compensation cases, the injunctive decree should be responsive to that violation and to that alone. Thus, the suggested language under (a) and (b) on page 30 of Respondents' brief, which goes beyond such violation, would find no factual support. No language in the suggestion would be warranted in any event other than "Employing attorneys on salary basis to represent its members with respect to Workmen's Compensation claims".

II.

Answers to Respondents' argument II. (Br. 30-36) are found in Petitioners' argument in their main brief (pp. 20-37).

III.

While the instant situation revealed a local problem within Illinois, the problem is not purely a local one within that State, as Respondents say (Br. 37); but United Mine Workers of America is a national organization operating throughout the anthracite and bituminous coal areas, and thus it is obvious that the situation is one of national interest rather than purely local interest.

CONCLUSION

For the reasons herein discussed, as well as those discussed in Petitioners' main brief, Petitioners submit that this Court should grant the relief contained in their main brief's Conclusion (p. 39).

Respectfully submitted,

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